
(1986) 10 P&H CK 0047
In the Punjab And Haryana At Chandigarh

Vinodkumar and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 22-10-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 207, 239, 294, 309

Citation : (1987) CriLJ 1335 : (1987) 1 RCR(Criminal) 222

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Judgement

M.M. Punchhi, J.—This petition on formal admission is being disposed of at the motion stage.

2. The skeletal facts sufficient to dispose of this petition are that the petitioners are partners in a firm and had business dealings with the complainant. During the course thereof, some of the transactions appeared to have a shade of criminality inasmuch as the complainant spelled out conspiratorial forgery and cheating. Accordingly, the complainant lodged a first information report with the police. The matter was investigated into and put up for trial as a warrant case. When the petitioners as accused were brought before the learned Magistrate and the question of charge was about to be considered, the petitioners wanted to place on record certain documents for being considered u/s 239, Code of Criminal Procedure (for short, the Code) with the support of Section 294. It would be useful to reproduce these two provisions herein:

239. When accused shall be discharged - If, upon considering the police report and the document sent with it u/s 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

294. No formal proof of certain documents (1) Where any document is filed

before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved.

The learned trial Magistrate took the view that the complainant was not before him and the Prosecutor was unable to admit or deny the genuineness of the documents sought to be placed by the petitioners on record. He, therefore, vide his impugned order dated 3-6-1986 rejected the prayer, which has given rise to the present petition. The petitioners contend that their right which is fundamental in nature has been violated for documents which they had sought to be introduced were essential in the first instance to be considered at the time of the framing of charge and in any event at subsequent stages of the trial if the eventuality arose.

3. Undeniably the trial of a warrant case on a police report commences when the accused appears or is brought before a Magistrate. The first step to be taken by the Magistrate in this regard is to satisfy himself that the provisions of Section 207 i.e. with regard to the supply of the documents mentioned therein, have been complied with. The next step is to apply mind on the police report and the documents sent along therewith. Simultaneously, he has been given the power to examine the accused at that stage as thought necessary and then the prosecution and the accused have also the right to an opportunity of being heard. Now when an opportunity of being heard is conferred as of right on the accused, it has to be seen whether there are any regulating factors in the Code by which such opportunity is to be availed of. One such pointer is Section 294 of the Code, which is applicable to all trials inclusive of warrant case trials. It is ex facie patent that the prosecution while presenting the police report can support the same with documents and they are required to be considered at the time of the framing of charge. It does not hold to any reason that the accused cannot at that stage produce his documents. This seems to be the reason for such a provision u/s 294 of the Code subject of course to the accused's documents being genuine. And at that stage the documents sought to be introduced by the accused are required to be included in a list and the prosecutor can be called upon to admit or deny the genuineness of each such document. This right is not merely conferred on the accused, but a corresponding right is also vested in the prosecution. Even the documents submitted along with the report u/s 173 of the

Code relied upon by the prosecution can be put to the accused and he can be asked to admit or deny the genuineness of each such document. This does away with the formal necessity of proving the genuineness of the document and such document can thereafter be read in evidence without proving of the signature of the person to whom it purports to be signed. The joint effect of the aforesaid two provisions is to put at par the prosecution and the accused so far as the documentary evidence is concerned. One cannot be allowed to score over another by taking shelter in procedural wrangles and tactical gimmicks. Thus, I am of the considered view that the learned Magistrate in suggesting to postpone admission of these documents at this stage on the ground that the complainant was not before him, tended to thwart the rights of the accused to have his documents admitted at that stage so as to be considered while considering the question of charge. Thus, in the interest of justice, it becomes essential to quash his impugned order and regulate the trial by suitable directions.

4. It would not be out of place at this stage to take note of a decision rendered in *Surja Ram v. Vakil Chand* (1985) 1 CLR 516 in which while interpreting Section 294 of the Code I had spelled out the efficacy of the provision in a complaint case where the complainant was almost always available in the Court for the purpose. Another decision cited by the learned Counsel for the petitioner is a Single Bench judgment of the Karnataka High Court reported as *Tirathraj Upendra Joshi v. State of Karnataka* 1983 Cri LJ 318, in which while spelling out the intendment of Section 239 of the Code, view was taken that the opportunity of being heard by the accused included his right to introduce documents at the pre-charge stage. But here the doubt expressed by the learned Counsel for the complainant is that Section 294 of the Code would be unworkable, for the admission or denial of the genuineness of such documents is to be put to the pleader for the prosecution and not to the complainant and if the pleader for the prosecution denies the genuineness of each document put in by the accused on the plea that he is not in communication with the complainant, then the Court cannot compel the pleader for the prosecution to establish such a communication. Such an interpretation as it appears to me would eat away the very purpose for which Section 294 is there in the Code. It has to be viewed in this context that the pleader prosecutes on the instructions received from the State agency of investigation and the complainant's version is part of the investigation. The prosecution as such is no artificial person, but a bunch of individuals who in the form of complainants, witnesses, investigators and projectors put, forward the offences for trial before a Court of law and the Court takes cognizance of the offence and not of the offenders. Thus, it seems to me that proper reading of Section 294 of the Code inheres in it the compulsive nature of communication between the prosecuting pleader and the investigating agency and necessarily of the complainant and witnesses. This duty enjoined upon the prosecuting pleader can only be discharged by establishing a communication so as to further the intendment of law and the protection of the right of the accused conferred u/s 239 of the Code of the opportunity of being

heard.

5. For what has been said above, while setting aside the impugned order, it is directed as follows:

i) The request of the accused to have documents introduced at the pre-charge stage shall be accepted conditionally on his firstly preparing a duplicate list thereof and in the remarks column mentioning a brief particulars of each document, unless there is a form which is prescribed by the State Government under Sub-section (2) of Section 294 of the Code, and in that case these particulars be in that form, and then putting the same before the Court.

ii) Thereafter a copy of the list shall be handed over to the prosecuting pleader and he shall be given an opportunity to establish contact with the investigating agency and the complainant or witnesses in order to admit or deny the genuineness of each such document.

iii) The admitted or denied genuineness of each such document shall not have the effect of determining the question of relevancy of each document at the pre-charge stage or at any subsequent stage; and

iv) The court shall have full power to impose costs for vexatious and obstructive adjournments u/s 309 of the Code, the mandate of which is that trial should be held as expeditiously as possible.

The parties through their counsel are directed to put in appearance before the learned Magistrate on 19th November, 1986.